

REMARKS

In response to the Office Action dated August 22, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 9-15 and 20-28 are pending in this application. Claims 1-8 and 16-19 were previously canceled without prejudice or disclaimer.

Rejection of Claims Under § 102 (e)

The Office rejects claims 20-25 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,104,337 to Allport. A claim, however, is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter “M.P.E.P.”).

Claims 20-25, however, are not anticipated by *Allport*. These claims recite, or incorporate, features that are not disclosed or suggested by *Allport*. Independent claim 23, for example, recites “*a motion detector in communication with the processor, the motion detector detecting different orientations of the remote control device and providing feedback to the processor, the processor changing to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices*” (emphasis added). Support for these features may be found at least at paragraphs [0027] – [0028] of the corresponding U.S. Patent Application Publication 2002/0085128 to Stefanik. For the Examiner’s convenience, independent claim 23 is reproduced below.

23. A remote control device, comprising:

a processor;

a remote control receiver in communication with the processor, the remote control receiver receiving a message from a consumer electronics device, the message indicating a scheduled event has occurred that was tracked using an electronic program guide;

an input device in communication with the processor;

a data storage area in communication with the processor;

an output device in communication with the processor, and

a motion detector in communication with the processor, the motion detector detecting different orientations of the remote control device and providing feedback to the processor, the processor changing to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices,

wherein after the processor receives said message, the processor retrieves instructions from the data storage area, interprets said message based upon said retrieved instructions and controls said output device to produce a customized alert associated with said scheduled event.

Allport does not anticipate these features. *Allport* has been thoroughly discussed in previous responses to office actions, so no detailed discussion is necessary. *Allport*, simply put, does not teach or suggest “a motion detector in communication with the processor, the motion detector detecting different orientations of the remote control device and providing feedback to the processor, the processor changing to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices” (emphasis added). *Allport*, then, cannot anticipate independent claim 23.

Claims 20-25, then, are not anticipated by *Allport*. Independent claim 23 recites many features that are not taught or suggested by *Allport*. The dependent claims incorporate these same features and recite additional features. Claims 20-25, then, cannot be anticipated, so the Office is respectfully requested to remove the § 102 (e) rejection of these claims.

Rejection of Claims 9-15 & 26-28

The Office also rejected claims 9-15 and 26-28 under 35 U.S.C. § 103 (a) as being obvious over *Allport* in view of U.S. Patent 6,346,891 to Feinlab, *et al.*

Claims 9-15 and 26-28, though, are not obvious over *Allport* with *Feinlab*. The proposed combination of *Allport* with *Feinlab* still fails to teach or suggest many features of the independent claims. Independent claim 26, for example, recites “*when the motion detector detects different orientations of the remote control, the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices*” (emphasis added). Support for these features may be found at least at paragraphs [0027] – [0028] of the corresponding U.S. Patent Application Publication 2002/0085128 to Stefanik. Independent claim 28 recites similar features.

The proposed combination of *Allport* with *Feinlab* does not obviate all these features. The Office even concedes that *Allport* fails to teach or suggest the claimed motion detector.

The Office asserts that *Feinlab* teaches these features, but the Office is, very respectfully, mistaken. While *Feinlab* teaches a remote control that is equipped with a motion sensor, *Feinlab*’s motion sensor does not detect “*different orientations of the remote control,*” such that “*the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices*” (emphasis added). The patent to Feinlab, *et al.* merely teaches a motion sensor that detects movement. *See* U.S. Patent 6,346,891 to Feinlab, *et al.* at column 2, lines 14-20. The motion sensor then sends a “WAKE” command to a controlled device. *See id.* at column 3, lines 24-29. The “WAKE” command causes the controlled device to begin a start-up phase of operation. *See id.* at column 3, lines 29-30. The start-up phase may be powering up, spinning a drive, starting an operating system, or invoking a start-up menu. *See id.* at column 3, lines 60-65. No where does *Feinlab* teach or suggest “*when the motion detector detects different*

orientations of the remote control, the processor changes to a mode of operation of the remote control device that corresponds to a particular orientation, such that different orientations of the remote control device control different electronic devices” (emphasis added).

The combined teaching of *Allport* with *Feinlab*, then, does not obviate claims 9-15 and 26-28. Independent claims 26 and 28 recite many features that are not taught or suggested by *Allport* with *Feinlab*. Their respective dependent claims incorporate these same features and recite additional features. Claims 9-15 and 26-28, then, cannot be obvious over *Allport* with *Feinlab*, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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